

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-136

May 7, 2003

CENTRAL MAINE POWER COMPANY)
Re: Request for Approval of Affiliate)
Interest Transaction between Central Maine)
Power Company and Union Water-Power)
Company)

TEMPORARY
PROTECTIVE ORDER NO. 1
Confidential Commercial
Information

On February 26, 2003, Central Maine Power Company ("CMP" or the "Company") submitted a Request for Approval of an Affiliate Interest Transaction with Union Water-Power Company ("Union"), whereby Union would provide support services to CMP through a Utility/Other Subsidiary Form of Support Services Agreement. This form of agreement is similar to support services agreements approved by the Commission in Docket No. 2001-178. As part of its filing in this proceeding, Central Maine Power Company (CMP) will be providing certain proprietary and/or confidential commercial information, specifically: vendor response materials and CMP's analysis of bids received. CMP expects to submit this documentation in late May. In addition, at the Technical Conference held on April 16 in this proceeding, certain data requests were directed to Union Water-Power Company (through CMP), specifically data request ODR-01-07 which seeks Union's rates for CMP as a customer and for non-CMP customers for pole setting, location services, and emergency services:

CMP claims that CMP's bid data and analysis and Union's billing rates constitute confidential commercial information. Both companies have maintained in the past that the release of this type of information would be damaging to their interests and those of their customers. Specifically, if vendors have access to such information they likely may be more inclined to submit future bid offers to CMP in a narrow price band around a previously disclosed winning bid price, which would not necessarily result in a least-cost bid. By maintaining a confidential bid process along with a private bid opening, vendors are encouraged to submit least-cost bids; and as a result, the Company and ratepayers benefit. All potential vendors, including Union, are excluded from viewing bid data and CMP's related analysis. According to CMP, with respect to Union, competitor companies could undercut Union's pricing should the company's billing rates become public knowledge.

Section 1311-A (1)(A) of Title 35-A of the Maine Revised Statutes grants the Commission the authority to issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets, or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c). The Hearing Examiner in Docket No. 2002-086, as well as in prior and subsequent proceedings, has recognized the legitimacy of these concerns. See, e.g., Hearing Examiners' Temporary Protective Order No. 1 – Confidential Commercial Information, in Re: Central Maine Power Company, Petition for Approval of Affiliated Interest Transaction with Union Water-Power Company To Install

and Test Fiber Optic Cable, Docket No. 2002-086. The bid information and CMP's analysis of those bids qualifies as confidential business information. The potential harm of disclosure, particularly to ratepayers, outweighs the benefit of its public disclosure.

CMP and Union are willing to produce the requested information on the condition that a protective scheme is implemented similar to that used in the Docket No. 2002-086 proceeding for that kind of information. Any party at any time can move for a finding that material subject to protection should no longer be protected or that the other party should be provided access to the protected information pursuant to protective provisions. Unless such a motion is granted, however, use of the allegedly confidential materials continues to be restricted by the terms of this Temporary Protective Order No. 1.

Therefore, in order to expedite the provision of this information to the Commission and the Public Advocate and subject to reconsideration in light of arguments by any intervenors, the Presiding Officer concludes that the limited and revocable protection requested by CMP is warranted under 35-A M.R.S.A. § 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure.

Accordingly, it is

ORDERED

1. That the following information shall be considered "Designated Confidential Information" for purposes of this Order and, until such time as this Order is modified, access to Designated Confidential Information shall be limited as described in Paragraph 4 below:
 - Vendor Response Materials,
 - CMP analysis of bids received for fiber optic cable installation and testing; and
 - Union's customer rates.
2. That all Designated Confidential Information shall, unless removed from the coverage of this Order, as provided in paragraph 3 below, be and remain confidential. Designated Confidential Information shall not be disclosed for any purpose other than the purposes of this proceeding, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others, except as provided in paragraph 4.
3. That the parties to whom Designated Confidential Information is furnished may challenge the designation of any documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. Upon the entry of a final unappealed decision granting

such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to the documents or information that the order granting the motion shall have expressly and clearly removed from the coverage of this Order.

4. That, until this Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members and members of the Commission Staff; (ii) the Public Advocate and counsel; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; (iv) counsel for or any other representative of CMP; and (v) counsel for any parties, provided that such counsel shall agree to use the Designated Confidential Information solely for purposes of this proceeding and not disclose the information to any other person and provided further, the attorney does not have "a personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information." 35-A M.R.S.A. §1311-A(1)(D)(2).
5. That all materials claimed by CMP to be Designated Confidential Information under the terms of this Order shall be clearly marked "confidential" by CMP. In the case of documents, each page of any such document shall be stamped "confidential" in bold lettering in the upper right hand corner of each page including the cover letter. Any document or portion thereof not clearly and conspicuously marked "confidential" in bold lettering shall not be protected under the terms of this Order. Faxed materials should be marked as any other document. With regard to other media, diskettes should be marked "confidential" on the outside and, to the extent possible, each file on the diskette should be similarly identified. Any person or party subject to the terms of this Order who receives unmarked documents or materials which he/she believes CMP intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify CMP of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order.
6. That no copies of Designated Confidential Information furnished by CMP shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under Paragraph 4 hereof also may take such notes as may be necessary solely for the purposes of this proceeding. Those notes shall also be treated as Designated Confidential Information.
7. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

8. That where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, that reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In those circumstances, counsel shall make every reasonable effort to preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Information in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Information shall be maintained under seal.
9. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of any Designated Confidential Information.
10. That should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with paragraph 10 shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.
11. That this Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information produced by Central Maine Power Company or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.
12. That CMP may, at its option, provide to each person (other than the Commissioners or Commission Staff) having access to Designated Confidential Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information.
13. That Designated Confidential Information furnished by CMP pursuant to this Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, until this Commission or its authorized presiding officer shall otherwise order.
14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.
15. Copies of Designated Confidential Information and documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information, that are in the possession of Commission members, counsel or employees of the Commission may be retained by those persons for the purpose of

performing those persons' duties and obligations. If retained, the Designated Confidential Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Information is used. If a Commission member, counsel or employee of the Commission does not retain the Designated Confidential Information, that person shall destroy it as provided in this paragraph. Within 40 days after the Commission reaches a final decision (i.e., unappealable) in this proceeding, each other party and Commission independent consultants and experts retained by the Commission to whom Designated Confidential Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.

16. That, notwithstanding paragraph 15 of this Order, the sealed record of this proceeding shall be retained by the Commission and shall continue to remain subject to the confidentiality requirements of this Order until otherwise ordered by the Commission.

Dated at Augusta, Maine, this 7th day of May, 2003.

BY ORDER OF THE PRESIDING OFFICER
